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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 852/2017 & CM No.28281/2017 (for stay)
SUMAN SONTHALIA Petitioner

Through: Mr. Sanjay Kumar Sharma, Adv.

Versus

VIBHA DEVI & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.08.2017**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 25th May, 2017 in MACT No.3314/2016 of the Court of Presiding Officer, Motor Accident Claims Tribunal (MACT)-02, South-East District, Saket Courts, New Delhi] though allowing the petitioner herein, who is the respondent before the MACT, to cross-examine the witness of the petitioner before the MACT but observing as under:

“Further, if for some unforeseen reasons, the petitioner shall not be available then her examination already recorded shall be read as such and no adverse influence shall be drawn for her non examination.”

2. The grievance of the petitioner is that the learned MACT has by the observation aforesaid, purported to penalise the petitioner for non-availability of the respondents for cross-examination, when in law, on non-appearance for cross-examination, the examination-in-chief should also not be read.

3. The learned MACT vide the impugned order listed the matter next on 4th July, 2017 for the evidence of the respondent (petitioner before the MACT).
4. The counsel for the petitioner on enquiry as to the proceedings before the MACT on 4th July, 2017 has drawn attention to the order sheet of that date adjourning the matter for “PE” to 18th July, 2017 recording “No PW is present” and to the order dated 18th July, 2017 adjourning the matter for “PE” to 1st August, 2017 recording “again no PW is present”. The counsel on enquiry states that on 1st August, 2017 also, the respondent did not appear for her cross examination and the matter is now listed next for PE on 22nd August, 2017.
5. It is not understandable that if the learned MACT on 25th May, 2017 had observed, that for non-appearance of the respondent, her examination-in-chief already recorded shall be read as such, notwithstanding her not appearing for cross-examination by the petitioner, why on 4th July, 2017, 18th July, 2017 and 1st August, 2017 indulgence was shown.
6. The aforesaid is indicative of non application of mind.
7. Be that as it may, merit is found in the contention of the counsel for the petitioner that once the application of the petitioner for opportunity to cross examine PW1 had been allowed, for non-appearance of PW1 for cross-examination, the examination-in-chief of PW1 should not be permitted to be read in evidence. For correcting the said error in the order, need to issue notice to the respondent is not felt.

8. The petition is disposed of by clarifying that if PW1 does not appear for cross-examination in pursuance to the order dated 25th May, 2017 supra, the examination-in-chief of PW1 shall not be read in evidence.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 08, 2017
'gsr'..

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